

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6917 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

PRABHUBHAI R PATEL

Versus

GUJARAT STATE FERTILIZER CO LTD

Appearance:

MR PC MASTER for Petitioner
MR SB MAZAGAONKAR Respondent No. 1
MR HL JANI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/97

ORAL JUDGEMENT

By this Special Civil Application the challenge has been made by the petitioner - an employee of the respondent No.1 to the award of the Industrial Tribunal, Baroda, made in Complaint (IT) No. 38 of 80 (5 of 84) on

9th April, 1995 under which the Industrial Tribunal has declined to grant the back wages to the petitioner. On the charge of committing theft of the property of the company, the petitioner was dismissed from service w.e.f. 10.1.1980. Against the order of dismissal, the petitioner has filed complaint aforesaid before the Industrial Tribunal at Baroda and the Industrial Tribunal, Baroda found that the penalty of dismissal of petitioner from service is quite excessive compared to the charges levelled against him. However, the back wages has not been awarded to the petitioner for the reasons given in the order and hence this Special Civil Application.

2. The learned counsel for the petitioner contended that the Labour Court has committed serious illegality in denying back wages to the petitioner. It is true that the petitioner committed theft of the property of the company but looking to the cost of the property stolen by the petitioner, the penalty imposed by the management is too excessive and disproportionate. The learned counsel for the petitioner further contended that in the case of other employees, who had committed theft of the property of the worth more than the cost of the property stolen by the petitioner, the management has taken lenient view. On the other hand, the learned counsel for the respondent contended that the Industrial Tribunal has taken a very very lenient view in the matter and the petitioner who has admittedly stolen the property of the company, has been ordered to be reinstated. The theft of the property of the company by the petitioner is a very serious misconduct and on proved of the same the only penalty could or should have been of his dismissal or termination or removal from the services and taking of lenient view in such matter by the Tribunal other wise will encourage the workman from indulging into such activities which ultimately may not be in the interest of the company and truly speaking in the interest of the public at large. Replying to the contention of the Corporation, the learned counsel for the petitioner contended that in other cases though the values of the properties which have been stolen by other employees of the company are more than the value of the property which has been stolen by the petitioner, the company has taken a very lenient view whereas in the present case, the respondent has taken very harsh action against the petitioner.

3. I have given my thoughtful consideration to the submission made by the learned counsel for the parties.

4. The petitioner has admitted that he committed

theft of the property of the company. The petitioner was holding the post of Foreman, which is sufficiently a high post of responsibility. If the petitioner has committed theft of the property of the company, I fail to see how far the value of the property is relevant. The relevant is the conduct of the petitioner and not the value of the property of company stolen by him. It is a very serious and grave misconduct apart from a case of criminal liability also. The company has not proceeded against the petitioner by lodging FIR before the police. The theft of the property of the company by its employees is not only a serious criminal offence but it is an offence of moral turpitude. The employee who commits the theft of the property of the company should not have been shown any leniency or sympathy. In the matter of misconduct of committing theft of the company property, the quantum or the cost of the property stolen is not the material but the conduct of the employee/workman is relevant. In such matter, the minimum punishment should have been only of dismissal, termination or removal from service. I find sufficient merits in the contention of the learned counsel for the respondent that in such matters, if the courts or labour courts or the tribunals shown leniency, that will certainly encourage the employees to indulge into such activity which will be ultimately not in the national interest. If the employee has started to commit theft of the property of the company itself, how far the company is safe, and in case, any indulgence has been shown to such persons only on the ground that the worth of the property stolen is of negligible value, which will encourage that person to indulge into such activity in the future also.

5. It is not a case where the Industrial Tribunal should have taken a lenient view in the matter and to interfere with the punishment which has been given to the petitioner by the respondent management for committing theft of the company property by him. The grievance of the petitioner that in other similar cases, the respondent company has taken lenient view, it is suffice to say that those matters are not before this court. The petitioner has not produced the relevant material about those persons and who are also not parties to this court and as such in the absence of those all the relevant materials and necessary parties, I do not consider it to be appropriate to go on examining the validity of those actions. However, if facts aforesaid stated by the petitioner are correct, I am constrained to observe that the action of the company of taking a lenient view in those cases of theft of the property of the company may not be correct. It is not a case where out of one

thousands employees/workmen, one theft has been brought on the record but when many of the employees/workmen committed theft of the company property the company should not have tolerated these serious misconducts. The respondent has not challenged the award of the Industrial Tribunal, for the reasons best known to it, other wise there would have been all probability of confirmation of the order of dismissal of the petitioner from service by this Court. The Industrial Tribunal has taken a very very lenient view in the matter and no interference in the award to the extent whereunder it declines to grant the back wages to the petitioner is called for. Other wise also, the Industrial Tribunal has given cogent and good reasons to deny the back wages to the petitioner.

6. It is not a case where the dismissal of the petitioner from the services is held to be illegal, perverse or arbitrary. In the present case, the Industrial Tribunal resorting to the provision of 11A of the Act, 1947 has gone on the question of the quantum of punishment and the punishment of dismissal of petitioner from the service was taken to be on the higher side. The Tribunal has ordered reinstatement of petitioner in the service without backwages. So, in the facts and circumstances of the case and after reading the order of the Tribunal it is clear that the back wages has been denied to the petitioner by way of penalty which is perfectly legal and just.

6. In the result, the Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief, if any granted earlier stands vacated with no order as to costs.

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